RECORD AND BRIEFS

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IN THE

Supreme Court of the United States

TRINITY LUTHERAN CHURCH OF COLUMBIA, INC., ET AL.,
Petitioners,

v.

SARAH PARKER PAULEY, IN HER OFFICIAL CAPACITY,
Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF *AMICUS CURIAE* LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. IN SUPPORT OF RESPONDENT

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INTERESTS OF *AMICUS CURIAE*

Amicus Curiae Lambda Legal Defense and Education Fund, Inc. is the nation's oldest and largest legal organization advocating for the advancement of the civil rights of lesbian, gay, bisexual, and transgender ("LGBT") people and people living with HIV, through impact litigation, education, and policy advocacy. *Amicus* submits this brief in support of Respondent.[1]

Amicus has participated as party counsel or *amicus curiae* in many cases navigating issues of religious liberties and rights to equal protection and freedom from government-supported discrimination, including, *e.g.*, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez*, 561 U.S. 661 (2010); *Locke v. Davey*, 540 U.S. 712 (2004); *Catholic Charities of the Diocese of Springfield-in-Illinois v. Illinois*, No. 20166-MR-254 (Ill. Cir. Ct., Sangamon Cty. Ct. Aug. 18, 2011); and *Bellmore v. United Methodist Children's Home*, No. 2002CV56474 (Super. Ct., Fulton Cty. Ct., Ga. Nov. 6, 2003).

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[1] All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amicus*, its members, or its counsel made a monetary contribution to its preparation or submission.

LGBT people and people living with HIV continue to experience, with disturbing regularity, religiously-based refusals of social services, medical care, employment, and educational opportunities. Religious organizations that receive government funds while providing services to the public are subject to constitutional and often statutory, regulatory, and contractual constraints on their ability to discriminate against their clients, employees, patients, students, and others. These constitutional and other constraints on the ability of government-funded organizations to discriminate are critical to ensuring that religious and other minorities, including LGBT people and those living with HIV, may enjoy equal dignity and live full and equal lives. *Amicus* submits this brief to address potential tensions in constitutional principles and interests involved in this case. *Amicus* seeks to ensure that its outcome in no way suggests a diminution of the government's responsibility and authority to safeguard against the use of government aid to support discrimination or coercion based on religion.

SUMMARY OF THE ARGUMENT

Petitioner Trinity Lutheran Church of Columbia, Inc., ("Trinity") asks this Court to hold that excluding religious schools, pursuant to Missouri's "no-aid" constitutional amendment, from direct aid as part of secular government funding programs violates the Free Exercise and Equal Protection Clauses. Such a holding—particularly in

the absence of explicit safeguards against use of government funds for religious activities or to subsidize discrimination—could impede governments from enforcing critical Establishment Clause and nondiscrimination requirements prohibiting use of government funds to aid religious activities, proselytization, coercion or discrimination.

Religious organizations that accept government funding to provide services to the public ascribe to a diversity of views and religious beliefs on areas that have been the subject of profound civil rights struggles. These organizations enjoy cherished First Amendment protections to follow their own religious views, principles, and practices—subject, however, to countervailing constitutional and legal constraints where the rights of others are at risk. An essential element of the balance our Constitution strikes demands that religious organizations receiving government support for services offered to the public not use such aid to advance religion or to discriminate.

Numerous Establishment Clause and equal protection precedents recognize the impropriety of governmental support to organizations that discriminate. *See, e.g.*, *Norwood v. Harrison*, 413 U.S. 455, 465-67 (1973) (A central principle of our constitutional order is that "the Constitution does not permit the State to aid discrimination" and "[a] State's constitutional obligation requires it to steer clear . . . of giving significant aid to institutions that practice racial or other invidious discrimination."). As Respondent argues, Missouri's exclusion of

Trinity from its scrap tire program does not violate Trinity's free exercise or equal protection rights. Were the Court nonetheless to rule to the contrary, any holding should leave no doubt that Missouri can and must still ensure that adequate safeguards prevent channeling government aid to advance religious activities or to support harmful discrimination.

ARGUMENT

I. Some Religious Organizations That Offer Services To The Public Seek to Discriminate On The Basis Of Religion And Other Grounds, And There Is Reason For Concern That The Learning Center Does As Well.

Religious organizations have supplied vital support and services to countless members of the public over the course of our nation's history. But our nation also has experienced—and erected constitutional and other bulwarks against—the misuse of government funds by religious institutions to underwrite their religious activities and discrimination on such bases as race, sex, religion, sexual orientation, and gender identity. Use of government aid to advance religion and engage in impermissible discrimination defies bedrock Establishment Clause and equal protection principles, and courts and government bodies have justifiably responded with safeguards against such abuses, including the type of "no-aid" prohibition at issue in this case. *See Norwood*, 413 U.S. at 462 ("[A]

State could rationally conclude as a matter of legislative policy that constitutional neutrality as to sectarian schools might best be achieved by withholding all state assistance."); *see also* MO. CONST. art. I, § 7. Indeed, particular care is warranted here to ensure that, were Trinity allowed the government support it seeks, it not use that aid to engage in religious activities or to discriminate in the school environment.

Trinity's Complaint states that the Learning Center, its religious school licensed by the State of Missouri, "admits students of any sex, race, color, religion, national and ethnic origin." Petition for Writ of Certiorari Appendix ("Pet. App.") at 101a. However, there would be strong reason to interrogate further, before simply blessing grant of government aid to Trinity's Learning Center, whether it, in fact, discriminates based on religion and other grounds with respect to admissions. The Learning Center "operates as a Church ministry." Brief for Petitioner at 3, *Trinity Lutheran v. Pauley*, 136 S. Ct. 891 (2016) (No. 15-577). The Complaint acknowledges that the school teaches a "Christian worldview." Pet. App. at 101a. The Learning Center's parent handbook further specifies that the curriculum is "Christ-centered," and involves daily prayer and "Jesus Time classes" in addition to weekly chapel. *Parent Handbook*, TRINITY LUTHERAN CHILD LEARNING CTR., http://tlclckids.com/enroll/parent-handbook/ (last visited July 1, 2016), Appendix at 1a; Pet. App. at 101a. The parent handbook also encourages "parents to be faithful in the use of God's

word." *Parent Handbook*, TRINITY LUTHERAN CHILD LEARNING CTR., *supra*. Students are invited to participate in Sunday worship services, where they sing under the direction of the Jesus Time teacher.[2] The Complaint does not specify where the school's religious activities do and do not take place, and whether they occur outdoors in the areas where Trinity demands the government fund its facilities. As this Court has acknowledged, "[m]any educational institutions . . . have recognized that the process of learning occurs both formally in a classroom setting and informally outside of it." *Christian Legal Soc.*, 561 U.S. at 704 (2010) (Kennedy, J., concurring) (citation omitted).

The Learning Center's nondiscrimination policy, available in the parent handbook, pointedly excludes religion (notwithstanding the contrary assertion in Trinity's Complaint), sexual orientation, or gender identity as impermissible bases for discrimination. In fact, the Learning Center's "enrollment policy" provides:

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[2] The Learning Center also appears to prefer coreligionists in its hiring, as its handbook explains, "We believe that young children benefit from an environment in which they have significant interaction with Christian adults as role models and helpers in leading a Christian life." *Parent Handbook*, TRINITY LUTHERAN CHILD LEARNING CTR., *supra*.

> The Board of Early Childhood Education of Trinity Lutheran Church has adopted the following enrollment policy for equal opportunity for students: Trinity Lutheran Child Learning Center admits and does not discriminate [against] students on the basis of sex, race, color, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the Learning Center.

Supra.

The omissions are unsurprising given that Trinity's parent denomination, the Lutheran Church-Missouri Synod (LCMS), holds that being lesbian, bisexual, gay, or transgender is "intrinsically sinful" and harmful to others. For example, an excerpt of LCMS "frequently asked questions" posted on the denomination's official website states: "The position of the LCMS, repeatedly affirmed, is that homophile behavior is intrinsically sinful, expressly condemned as immoral by the Scriptures." *Frequently Asked Questions: LCMS Views*, THE LUTHERAN CHURCH MISSOURI SYNOD, http://www.lcms.org/faqs/lcmsviews#homosexuality (last visited June 30, 2016).

Additionally, the LCMS has co-branded guidance for schools with the Alliance Defending Freedom, counsel for Trinity in this case. This guidance advises LCMS schools not to hire people who are either outside the schools' faith tradition or

who reject the "moral standards that come with that faith." *See, e.g.*, Megan K. Mertz, *ADF's Baylor delves into legal issues facing LCMS schools*, THE LUTHERAN CHURCH MISSOURI SYNOD NEWS AND INFORMATION (June 10, 2016), http://blogs.lcms.org/2016/legal-issues-facing-lutheran-schools. It further directs LCMS schools to make clear related "expectations for students and families." *Id.* And it directs that this guidance be followed while "not [withdrawing] from government funding programs." *Id.*

Consequently, it seems quite likely that the Learning Center would refuse to admit a child of same-sex or transgender parents, or even a child whose parents hailed from a differing religious tradition. Indeed, in an interview concerning the LCMS co-branded guidance, a lawyer for the Alliance Defending Freedom asserts expressly that LCMS schools are entitled to refuse to admit a child of same-sex couples. *See KFUO Audio: Critical issues facing Lutheran schools in today's political landscape*, Interview Part I: June 7, 2015, 16:25-19:16, THE LUTHERAN CHURCH MISSOURI SYNOD NEWS AND INFORMATION (June 9, 2016), http://blogs.lcms.org/2016/kfuo-audio-critical-issues-facing-lutheran-schools-in-todays-political-landscape.

There is thus reason for concern that the Learning Center seeks government aid that would support discrimination in its program based on sexual orientation, gender identity, and religion, and about the implications of providing state assistance to an organization engaging in such discrimination.

These concerns are particularly warranted given the unfortunate precedent in this country of government-funded religious institutions discriminating based on race, sex, religion, sexual orientation, and gender identity with respect to employment and provision of services to the public. In response to such discrimination, courts and state and federal agencies have relied on constitutional, statutory, regulatory, and contractual nondiscrimination requirements to prevent institutions receiving public funds from discriminating against members of the public. The continued enforceability of such nondiscrimination requirements remains critical to the right of every person to be free from government-sanctioned discrimination and religious coercion.

A number of such cases have arisen in the social services context. For example, in *Pedreira v. Kentucky Baptist Homes for Children, Inc.*, 579 F.3d 722 (6th Cir. 2009), taxpayer plaintiffs and a former and prospective employee of a publicly funded religious child welfare facility alleged that the facility used government aid for religious indoctrination of children in its care, and also that the facility discriminated based on sexual orientation in employment. The Sixth Circuit held that the plaintiffs stated a claim for a violation of the Establishment Clause and that the facility's discriminatory employment practices were relevant to determining whether there was such a violation.

In *Catholic Charities of the Diocese of Springfield-in-Illinois*, Catholic Charities

unsuccessfully brought suit seeking a renewed state contract to provide child welfare services in Illinois despite refusing to license same-sex couples as foster parents in accordance with state law. *Catholic Charities of the Diocese of Springfield-in-Illinois, supra*, No. 20166-MR-254 (Ill. Cir. Ct., Sangamon Cty. Ct.). Similarly, *Bellmore* involved a publicly-funded child welfare agency that discriminated against a lesbian counselor and Jewish job applicant for a psychotherapist position on the basis of religion, as well as engaging in religious proselytizing and advocating sexual orientation "conversion" efforts for gay foster care youth. *See Bellmore v. United Methodist Children's Home*, No.2002CV56474 (Super. Ct., Fulton Cty. Ct., Ga.). The case settled after the State and the agency agreed not to permit discrimination in employment or services. *See In a First-of-Its-Kind Example, Lambda Legal Announces Settlement Agreement that Lays Groundwork for Civil Rights Safeguards in Public Funding of Faith Based Organizations*, LAMBDA LEGAL DEFENSE AND EDUCATION FUND, Inc., (Nov. 5, 2003), http://www.lambdalegal.org/news/dc_20031105_in-first-of-its-kind-example-lambda-announces-settlement.

II. The Establishment Clause Prohibits Government Aid To Sectarian Schools Absent Safeguards To Protect Against Diversion Of Such Aid For Religious Use Or To Support Discrimination.

The Establishment Clause prohibits government from providing direct aid to sectarian schools that use the funds or materials for religious purposes or engage in religious discrimination. Such aid would result in impermissible government coercion of students from differing religious traditions and is unconstitutional regardless of whether the aid is awarded as part of a neutral aid program. Consequently, if this Court were to depart from *Locke* to hold that excluding such schools from government funding programs violates their free exercise or equal protection guarantees, longstanding Establishment Clause jurisprudence and its protections against government coercion to participate in religion could be imperiled. When government provides aid to religious schools and other entities, it must do so with safeguards ensuring that these institutions neither discriminate based on religion nor use the funds to inculcate religion. Here, for example, even if Article I, § 7 of the Missouri Constitution did not exist, Missouri could provide a scrap tire grant to Trinity consistent with Establishment Clause constraints only if the grant were conditioned on the Learning Center neither using the playground for prayer or other

religious purposes nor discriminating based on religion.[3]

Justice O'Connor's concurrence in *Mitchell v. Helms*, 530 U.S. 793 (2000), stands as this Court's controlling authority on the constitutional constraints on government aid to religious institutions and activities. In *Mitchell*, four Justices joined a plurality opinion that, together with Justice O'Connor's concurrence (joined by Justice Breyer), upheld a federal program that distributed funds to state and local governmental entities. These entities used the funds to loan educational materials and equipment to public and private schools, including some parochial schools. Because the support of the concurring justices was necessary to achieve a majority, and the concurrence upheld the program on the narrowest grounds and garnered a majority of the Court (including three dissenting justices), the concurring opinion limits *Mitchell's* holding. *See Marks v. United States*, 430 U.S. 188, 193 (1977).

The *Mitchell* concurrence reaffirmed the

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[3] *Amicus* agrees with the contention in the *Brief of Amici Curiae American Civil Liberties Union, et al.* that this case raises additional Establishment Clause concerns related to the unique dangers of direct cash aid to a house of worship, as opposed to a religiously affiliated institution whose mission is the provision of services to the public, such as a school, hospital, or social service provider. *Amicus* focuses here on the protections provided by the Establishment Clause against religious coercion and discrimination on the part of any religious organization receiving public aid.

longstanding principle that, even if government aid is distributed neutrally on the basis of secular criteria that neither favor nor disfavor religion, "actual diversion of government aid to religious indoctrination" or "the advancement of religion" is "constitutionally impermissible." *Mitchell* at 840; *accord id.* at 868, 884, 909 n.27 (Souter, J., dissenting, joined by Stevens & Ginsberg, JJ.). Government resources should not be used to assist "a sectarian school's religious mission" or to "advance the religious missions of the recipient schools," and government support must not be employed by recipients "to finance religious activities" or "to support their religious objectives." *Mitchell* at 840 (O'Connor, J., concurring, joined by Breyer, J.) (citation omitted).

The few decisions permitting government funding to religious schools that engage in proselytization "rested on a significant factual premise" missing both in *Mitchell* and here—namely, that the aid in each of these programs was provided directly to individual students who, in turn, made the independent choice where to put that aid to use. *Id.* at 841 (citing *Witters v. Washington Dept. of Services for the Blind*, 474 U.S. 481, 488 (1986)); *Zobrest v. Catalina Foothills School Dist.*, 509 U.S. 1, 10, 12 (1993). Accordingly, the Court's approval of the aid in these cases relied on the fact that "[a]ny aid . . . that ultimately flows to religious institutions does so only as a result of the genuinely independent and private choices of aid recipients." *Mitchell*, 530 U.S. at 811 (O'Connor, J., concurring), citing *Witters*,

474 U.S. at 487; *see also, e.g.*, *Agostini v. Felton*, 521 U.S. 203, 219 (1997); *Zelman v. Simmons-Harris*, 536 U.S. 639, 652-53 (2002).

Direct government funding of a school that diverts the aid to religious use or discriminates based on religion violates two Establishment Clause principles—that government may neither advance an organization's religious mission, nor "endorse" religion. As Justice O'Connor explained, there are "special Establishment Clause dangers" raised by direct money payments to sectarian institutions, and even a per capita aid program can communicate an impermissible message of endorsement. *Mitchell*, 530 U.S. at 843 (quoting *Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819, 842 (1995)). "Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message." *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring). In this way, the Establishment Clause serves the purpose of protecting minorities, because endorsing religion within a school environment discriminatorily empowers members of a majority religion and marginalizes those who are not. *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290, 316 (2000).

Mitchell reinforces prior precedent holding that the Establishment Clause prohibits government

from "discriminat[ing] among persons on the basis of their religious beliefs and practices." *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 590 (1989), *dicta on different issue disapproved by Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811 (2014); *accord Alvarado v. City of San Jose*, 94 F.3d 1223, 1231 (9th Cir. 1996); *Am. Jewish Cong. v. City of Beverly Hills*, 90 F.3d 379, 383 (9th Cir. 1996). Governmental aid must be "made available to both religious and secular beneficiaries on a nondiscriminatory basis." *Mitchell*, 530 U.S. at 813 (plurality op.), 846 (O'Connor, J., concurring) (both quoting *Agostini*, 521 U.S. at 231); *Illinois ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203 (1948) (Frankfurter, J., concurring, joined by Jackson, Rutledge, & Burton, JJ.) (Establishment Clause protects religious minorities against the feeling of exclusion or separation from the polity); *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 9-11 (1947) (Establishment Clause prevents discrimination against religious minorities).

Direct government funding to schools that either discriminate based on religion or use that aid to inculcate religion also implicates a related Establishment Clause concern—the need to protect children against government coercion to participate in religion. Governmental support of programs that benefit the public must not "give aid recipients any incentive to modify their religious beliefs or practices" or "to undertake religious indoctrination." *Agostini*, 521 U.S. at 231-32. "It is beyond dispute . . . that government may not coerce anyone to support or

participate in religion or its exercise." *Lee v. Weisman*, 505 U.S. 577, 587 (1992). Thus, "when state funds are used to coerce worship or prayer, the Establishment Clause has been violated." *DeStefano v. Emergency Housing Group, Inc.*, 247 F.3d 397, 412 (2d Cir. 2001). In *Center Twp. of Marion County. v. Coe*, 572 N.E.2d 1350, 1359-60 (Ind. App. 1991), for instance, the court held that a township violated the Establishment Clause by paying religious missions to provide shelter for the homeless, because the missions required the homeless to attend religious services in order to receive shelter.

Recognizing the impropriety of governmental aid to religious discrimination, this Court in *Norwood* cited with approval a statement by Justice White in his opinion in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), that "legislation providing assistance to any sectarian school which restricted entry on racial or religious grounds would, to that extent, be unconstitutional." *Norwood*, 413 U.S. at 465 n.7 (citing *Lemon*, 403 U.S. at 671 n.2 (White, J., concurring in part and dissenting in part)). Indeed, in cases involving substantial governmental aid to religiously-affiliated educational institutions, this Court has upheld aid only where the institutions did not discriminate on the basis of religion in admissions or employment (*see Zelman*, 536 U.S. at 645; *Roemer v. Bd. of Pub. Works*, 426 U.S. 736, 757 (1976); *Hunt v. McNair*, 413 U.S. 734, 743-44 (1973); *Tilton v. Richardson*, 403 U.S. 672, 686 (1971)), and prohibited aid directed to institutions that did discriminate. *See Comm. for Pub. Educ. & Religious*

Liberty v. Nyquist, 413 U.S. 756, 767-68 (1973); *Lemon*, 403 U.S. at 611 n.5, 617; *see also Bowen v. Kendrick*, 487 U.S. 589, 609 (1988) (explaining that in *Bradfield v. Roberts*, 175 U.S. 291, 298-99 (1899), the Court upheld federal aid to a religiously-affiliated hospital in part because there was no allegation that the hospital discriminated on the basis of religion in hiring or delivery of services.)

The Establishment Clause's nondiscrimination principle has served as the basis for numerous court decisions invalidating discriminatory conduct by religious actors receiving government funding. *See, e.g., Ams. United for Separation of Church and State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 418-19, 424-25 (8th Cir. 2007) (state payments to religious prison program unconstitutional because program's religious indoctrination resulted in award of prison benefits on discriminatory basis). Similarly, in *Ams. United for Separation of Church and State v. Bubb*, 379 F. Supp. 872, 892-93 (D. Kan. 1974), a three-judge district court ruled that a college's policy of discriminating in admissions on the basis of religion was sufficient, by itself, to disqualify the college from public aid through a state tuition grant program. The Establishment Clause's protection against discrimination also stands as a bulwark against legislation that aims to facilitate discrimination by organizations that serve the general public but object on religious grounds to serving certain members. *See, e.g., Campaign for Southern Equality v. Bryant*, No. 3:16-cv-99442-CWR-LRA (S. D. Miss. filed Jun. 30, 2016) (enjoining

Mississippi law that would prohibit enforcement of nondiscrimination requirements against organizations—including those receiving government grants, or providing services to the public pursuant to government contracts—that justify such discrimination on the basis of a religious belief or moral conviction that marriage "should be recognized as the union of one man and one woman," or that a person's gender is "immutable" and determined solely by "anatomy and genetics at the time of birth.").

Indeed, numerous courts have held that publicly funded social service providers are not entitled to religious accommodations that would permit them to deliver services in a sectarian or discriminatory manner, which would violate the Establishment Clause. *Moore v. Metropolitan Human Service Dist.*, 2010 WL 3982312 (E.D. La. Oct. 8, 2010) (public employee social worker not entitled to religious accommodation after being told not to engage in Christian counseling methods or face termination; court noted that limiting her religious interactions with clients was necessary to avoid an Establishment Clause violation); *Bollenbach v. Bd. of Educ.*, 659 F. Supp. 1450, 1473 (S.D.N.Y. 1987) (rejecting as improper employer's refusal to provide comparable routes to women bus drivers in deference to religious objections of male student bus riders, holding that nondiscrimination was required in order to avoid Establishment Clause violation); *Spratt v. Kent County*, 621 F. Supp. 594, 600-02 (W.D. Mich. 1985) (county employer justified

in firing social worker for alienating clients by counseling them in a religious manner, as county wished to avoid Establishment Clause violation).

Accordingly, if this Court were to accept Trinity's invitation to declare Article I, § 7 unconstitutional as applied, an outcome *Amicus* opposes, *Amicus* respectfully requests the Court to clarify explicitly that Missouri's scrap tire funding program—and any comparable government aid program—must include appropriate safeguards to ensure that religious institution recipients neither discriminate based on religion nor use government-supported facilities for religious purposes. *See, e.g.*, *Mitchell*, 530 U.S. at 861 (O'Connor, concurring) (describing safeguards employed by federal funding program that limited aid to secular, neutral, and nonideological services, among other things); *Nyquist*, 413 U.S. at 773-74.

III. The Equal Protection Guarantee Is A Further Limitation On Government Aid To Institutions That Discriminate.

The government's responsibility likewise extends to safeguarding against the use of government aid to discriminate against historically oppressed groups. Rights to the free exercise of religion do not trump hard-won rights to be free of government-supported discrimination on such bases as race, sex, or sexual orientation, as well as religion itself. "Invidious discrimination . . . is not subject to affirmative constitutional protection when it involves

state action." *Gilmore v. City of Montgomery, Ala.*, 417 U.S. 556, 575 (1974); *see also Norwood*, 413 U.S. at 470. The government similarly has the authority to prohibit discrimination by private actors against members of minority groups even when the discrimination is motivated by religious convictions; the government certainly is under no obligation to subsidize that discrimination.

"The Constitution confers upon no individual the right to demand action by the State which results in the denial of equal protection of the laws to other individuals." *Shelley v. Kraemer*, 334 U.S. 1, 22 (1948). While churches and individuals in their dealings outside the public square may, within certain bounds, be entitled to private practice of beliefs that discriminate against others, they are not entitled to government support and funding to do so. "Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect." *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984).

In the context of government subsidies, "[t]his means that any tangible state assistance, outside the generalized services government might provide . . . in common . . . with all citizens, is constitutionally prohibited if it has 'a significant tendency to facilitate, reinforce, and support private discrimination.'" *Gilmore*, 417 U.S. at 568-69 (quoting *Norwood*, 413 U.S. at 466). The state thus is constitutionally obligated not only "to steer clear" of engaging in direct discrimination, "but also of giving significant aid to institutions that practice racial or other invidious discrimination." *Norwood*, 413 U.S.

at 467. "Activities that the . . . government could not constitutionally participate in directly cannot be supported indirectly through the provision of support for other persons engaged in such activity." *Nat'l Black Police Ass'n, Inc., v. Velde*, 712 F.2d 569, 580 (D.C. Cir. 1983) (citation omitted).

In multiple contexts, over many years, this Court and lower courts have reaffirmed this fundamental check on state support of private discrimination. So, for example, in *Norwood* this Court struck down as violative of the equal protection guarantee Mississippi's textbook lending program to the extent that it provided books to private schools that practiced racial segregation. According to the Court, "[t]hat the Constitution may compel toleration of private discrimination in some circumstances does not mean that it requires state support for such discrimination." *Norwood*, 413 U.S. at 463; *see also, e.g., Gilmore*, 417 U.S. at 570-74 (requiring careful scrutiny to determine whether city's provision of playing fields to racially segregated schools constituted state involvement sufficient to violate equal protection guarantee); *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961) (holding that government agency's lease of space in public building to private restaurant practicing racial discrimination violated equal protection guarantee).

Nor, as this Court has held, must the government provide its support merely because the recipient's discrimination is grounded on religious conviction. *See Bob Jones Univ. v. United States*, 461

U.S. 574, 580, 583 n.6 (1983) (upholding denial of tax exempt status to Christian religious school whose racially restrictive policies stemmed from beliefs that "mixing of the races" would violate Divine law).

In related contexts as well, courts have repeatedly rejected religious beliefs as insufficient justification to override countervailing equality interests in freedom from discrimination based on such traits as race, sex, and sexual orientation, whether derived from the constitutional guarantee of equal protection or from government-enacted remedial prohibitions on discrimination. Thus religious views condemning interracial relations were rejected as barriers to enforcement of nondiscrimination principles. *See, e.g., Loving v. Virginia*, 388 U.S. 1, 3 (1967) (rejecting religious tenets against interracial marriage to justify state anti-miscegenation law); *Whitney v. Greater N.Y. Corp. of Seventh-Day Adventists*, 401 F. Supp. 1363 (S.D.N.Y. 1975) (church firing of white clerk typist for friendship with black person based on religious objection to interracial relationships was not protected exercise of religious freedom); *Newman v. Piggie Park Enters., Inc.*, 256 F. Supp. 941, 944-45 (D.S.C. 1966) (rejecting claim to free exercise of segregationist religious belief to override federal Civil Rights Act of 1964), *rev'd on other grounds*, 377 F.2d 433 (4th Cir. 1967), *aff'd and modified on other grounds*, 390 U.S. 400 (1968).

Courts have similarly rejected exemption from sex discrimination prohibitions as a free exercise right for those holding conflicting religious beliefs.

Notwithstanding longstanding religious traditions on which such free exercise claims often were premised, courts recognized that the religious views could not be accommodated without vitiating sex discrimination protections on which women were entitled to depend. *See, e.g.*, *Dole v. Shenandoah Baptist Church*, 899 F.2d 1389 (4th Cir. 1990) (church-operated school could not evade obligation to pay married women fair wages by citing on religious beliefs); *EEOC v. Fremont Christian Sch.*, 781 F.2d 1362 (9th Cir. 1986) (church-owned school violated antidiscrimination law by offering unequal health benefits to female employees, notwithstanding free exercise defense); *Bollenbach*, 659 F. Supp. at 1472.

These same principles apply as barriers to government support for institutions that discriminate on the basis of sexual orientation or gender identity. For much of our nation's history, lesbians, gay men, and bisexuals were unconstitutionally criminalized and "condemned as immoral by the state itself," *Obergefell*, 135 S. Ct. at 2596, fueling discrimination against them by non-government actors in such areas as "employment, family issues, and housing," *Lawrence v. Texas*, 539 U.S. 558, 582 (2013) (O'Connor, J., concurring) (citation omitted). As this Court noted last term, for some, opposition to the fundamental rights and equality of same-sex couples derives from "decent and honorable religious or philosophical premises." *Obergefell*, 135 S. Ct. at 2602. Yet when those beliefs become "enacted law and public policy, the necessary consequence is to put the imprimatur of the State

itself on an exclusion that . . . demeans and stigmatizes" same-sex couples and their families. *Id.* This, the State may not do. *See also Romer v. Evans*, 517 U.S. 620, 635 (1996) (rejecting private religious objections as justification for Colorado's constitutional amendment denying nondiscrimination protections to gay people); *see generally Christian Legal Soc.*, 561 U.S. at 699 ("Although the First Amendment may protect [a religious student group's] discriminatory practices [regarding gay people] off campus, it does not require a public university to validate or support them."). Thus, Missouri could no more provide material support to a sectarian—or non-sectarian—private school that discriminates against LGBT people than Mississippi could provide textbooks to racially segregated private schools in *Norwood*.

Just as with prohibitions against racial and sex-based discrimination, courts have repeatedly rejected religious objections by participants in the public arena to generally applicable prohibitions against sexual orientation-based discrimination, which "are well within the State's usual power to enact . . . " *Hurley v. Irish-American Gay, Lesbian & Bisexual Group*, 515 U.S. 557, 572 (1995). *See, e.g.*, *Bodett v. Coxcom, Inc.*, 366 F.3d 736 (9th Cir. 2004) (rejecting religious accommodation claim); *Hyman v. City of Louisville*, 132 F. Supp. 2d 528, 538 (W.D. Ky. 2001) (rejecting physician's claim of religious exemption from nondiscrimination laws), *vacated on other grounds by Hyman v. City of Louisville*, 2002 WL 31780201 (6th Cir. Dec. 2, 2002); *Elane*

Photography, LLC v. Willock, 309 P.3d 53, 59, 61-68 (N.M. 2013) (rejecting photographer's claim to religious exemption); *North Coast Women's Care Med. Grp., Inc. v. San Diego Cnty. Super. Ct.*, 189 P.3d 959 (Cal. 2008) (rejecting physician's claim to religious exemption).

Against the backdrop of discrimination that has long "harm[ed] and humiliate[d]" not only LGBT people but also their children, *Obergefell*, 135 S. Ct. at 2601, the government has a compelling interest to ensure that when it uses its resources, it does so in a way that does not perpetuate invidious discrimination, even when premised on religious convictions.

CONCLUSION

Amicus believes that Article I § 7 of the Missouri Constitution and its application to preclude Trinity from receipt of a government grant violates neither the Free Exercise nor Equal Protection Clause. Should this Court disagree, however, *Amicus* respectfully requests that any contrary ruling, nonetheless, acknowledge governments' ongoing responsibility to offer such aid only with adequate safeguards against use of government support to advance religious indoctrination and coercion, or discrimination.

There should be no possibility that a child and her same-sex parents are fenced out of Trinity, left to gaze at a publicly funded playground they may not enter, as its use is reserved solely for children from a

preferred religious tradition as a place to play and pray. The fence belongs instead precisely where Article I, § 7 erects it: separating Church from State. "If nowhere else, in the relation between Church and State, 'good fences make good neighbors.'" *Illinois ex rel. McCollum v. Bd. of Educ. of Sch. Dist. No. 71, Champaign City*, 333 U.S. 208, 232 (1948)) (Frankfurter, J., concurring).

Respectfully submitted,

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Parent Handbook

Trinity Lutheran Child Learning Center

2201 West Rollins Road, Columbia, MO 65203

Dear Parents,

Trinity Lutheran Child Learning Center, a ministry of Trinity Lutheran Church, Missouri Synod, welcomes you and your child. We are licensed by the State of Missouri, Department of Health. Our curriculum is developmentally appropriate for young children and provides a balance of teacher-child directed activities based on Creative Curriculum. Our TLCLC daily morning schedule consists of Jesus Time/chapel, music, small group time, learning centers, gym and playground time.

Various events are scheduled throughout the year such as field trips, family picnic, Children's Christmas service and "Center Sunday" when families are invited to worship with us at Trinity and the children sing under the direction of Mrs. White, our music/Jesus Time teacher.

We enroll children who are age **2 years old through prekindergarten age.**

We offer a school year and summer program with a week closed before and after summer session. Please plan to **re-enroll** your child for each of the sessions that you wish to have your child attend. JANUARY is RE-ENROLLMENT MONTH for families currently attending and their younger siblings, former families and Trinity church members.

Starting on February 1st, we will begin calling families on the waiting list to fill any open spaces.

We hope that this parent handbook answers many of your questions and that you will not hesitate to call us for any further information. (573) 445-1014 or email us at tlclc@trinity-lcms.org

God's Blessings, Gail S. Schuster, Director TLCLC

Trinity Lutheran Child Learning Center Philosophy

TLCLC is a ministry of Trinity Lutheran Church for families with young children. We believe that young children benefit from an environment in which they have significant interaction with Christian adults as role models and helpers in leading a Christian life. The Learning Center is committed to providing a learning program relevant to each child's spiritual, intellectual, physical, emotional and social growth. Our curriculum is Christ-centered in its approach to teaching developmental and academic readiness skills, concepts, and values. Prayer is an integral part of each day, as are daily "Jesus Time" classes and weekly chapel times with the pastors. The members of the staff are committed to providing an atmosphere of personal warmth and support which stems from a love of our Lord and a love for the children.

We encourage parents to be faithful in the use of God's Word and in attendance at services in God's house. Children of families who are not members of Trinity Lutheran Church are welcome to enroll at

the Learning Center. If you are looking for a church home, please contact our church office at 445-2112 to speak with a pastor.

"Love the Lord your God with all your heart and with all your soul and with all your strength. These commandments that I give you today are to be upon your hearts. Impress them on your children. Talk about them when you sit at home and when you walk along the road, when you lie down and when you get up." — *Deuteronomy 6:5-7*

"Train up a child in the way he should go, and when he is old, he will not depart from it." – *Proverbs: 22:6*

ENROLLMENT SCHEDULE

Days offered:

Tuesday/Thursday – 2 days

Monday/Wednesday/Friday – 3 days

Monday-Friday – 5 days

Times offered:

8:30-11:30 am – mornings

8:30-1:00 pm – mornings with lunch

6:30-5:30 pm – full day

Meals served:

8:00 am breakfast

Mid morning snack

11:30 am lunch

afternoon snack

ENROLLMENT POLICY

The Board of Early Childhood Education of Trinity Lutheran Church has adopted the following enrollment policy for equal opportunity for students: Trinity Lutheran Child Learning Center admits and does not discriminate students on the basis of sex, race, color, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the Learning Center.

POLICY GUIDELINES – Tuition, Fee, and Schedules

Trinity Lutheran Child Learning Center operates as a self-supporting, educational non-profit organization, financed by tuition receipts and congregational support.

ENROLLMENT FEES

A non refundable enrollment fee of $50 (fall session) and $20 (summer session) must accompany each enrollment form. These enrollment fees will be charged for every child each session of attendance.

TUITION PAYMENTS

Tuition payments are due on the first day of each month with a 10 day grace period. Please refer to your contract for the monthly amount

due as you will not receive a monthly invoice. Any payments not received by the tenth of the month will be charged a $10 late fee, unless special arrangements are made.

If payment is not received by the last day of the month, the student will not be allowed to attend school until all fees and late charges are paid in full or special arrangements are made. Fees paid by a government agency will not be assessed a late fee.

This payment is determined by taking the cost per day times the total number of days a child is scheduled for attendance during that session. This total is then divided into nine equal payments (fall session), or two equal payments (summer session). Since the operational expenses are budgeted according to anticipated income, the full monthly tuition must be paid even if a child has been absent due to sickness or other reasons.

RETURNED CHECKS

Any check returned for insufficient funds will be assessed an additional $15 fee.

WITHDRAWALS

If it becomes necessary to withdraw your child please pick up a withdrawal form from the office. A 30 days notice is required and full tuition for that month is required to the day of withdrawal.

CONTRACT REWRITES

Parents or guardians will be allowed to change the hours/days on their contract once their child's session has begun if the days are available at that point. Such changes requiring a rewritten contract will be assessed a **$10 rewriting fee.**

DROP OFF/PICK UP Please accompany your child into the Center and to his/her room to greet the teacher and to put jackets, etc. into your child's cubby.

Please remember to sign-in and sign-out your child each day on the clipboard located on the entryway table. Per licensing, this person must be at least 18 years of age.

LATE PICK-UP

If you have an emergency and expect to be late, please call the Center at 445-1014 so we can explain this to your child.

A ***$1.00 per minute late fee will be assessed*** for children not picked up by their scheduled pick up time.

CLOSED HOLIDAYS

We follow the Columbia Public School calendar as far as being closed on holidays and in addition we are closed Good Friday. We ***are in session*** on days that CPS closes for their parent/teacher conferences, teacher meetings, workshops, etc.

SNOW DAY CLOSING

We will automatically close when Columbia Public Schools announce a snow day closing. We will notify the radio and TV stations as well, however, please don't wait to hear of these separate announcements to proceed with your morning plans.

If Columbia Public Schools call a late start or early dismissal due to hazardous weather we will keep our usual hours of operation (7:00-5:30).

HEAT DAYS–We will remain open when Columbia Public Schools announce a "heat day closing".

FIRST DAY of SCHOOL YEAR

We generally start in August on a Monday of the same week that CPS schedules their first day and then end on a Friday in MayJune close to CPS's last day of school. We will always adhere to our last day, per your tuition agreement, even if CPS adjusts their last day in the spring because of snow days.

SPECIAL NEEDS CHILD

Parents of children with special needs must be aware that TLCLC may not be able to accommodate their child. These concerns should be discussed with the director prior to enrollment.

ENROLLMENT is limited by state regulations concerning student-teacher ratios and maximum building capacity.

Preschool.....10 children per class daily

PreK.....10 children per class daily

(unless all children in one class have turned 5 years old)

REQUIRED FORMS

The following forms must be completed and turned into the Learning Center office on or prior to your child's first day of school:

___enrollment form

___information card

___parent questionnaire

___tuition contract

___sunscreen permission form

___health medical form completed by child's physician

___copy of updated immunizations including:

- VARICELLA or doctor's signature and statement of the month/year your child had chickenpox

(a new requirement as of July 1, 2010)

- Pneumococcal conjugate vaccine (PCV)

According to state licensing, a child is not allowed to attend school without these completed health forms. Each child is required to have a physical examination by a physician prior to the beginning of the school entry to TLCLC. Immunizations must be kept up-to-date; see included chart.

HEALTH AND SAFETY

Parents are responsible for the periodic examination concerning their child's health. Teachers should be informed, in writing of any medical problems a child may have, i.e. asthma, allergies, diabetes, etc

WHEN TO KEEP A CHILD AT HOME WITH HEALTH ISSUES

A child should be kept at home if, during the previous 24 hours, any of the following symptoms have been observed:

1. Sore throat, runny nose, cough or sneezing

2. Upset stomach (vomiting, diarrhea, abdominal cramps)

3. An undiagnosed rash

4. Nasal or bronchial congestion or discharge

5. Bloodshot, red swollen eyes or eyelids or discharge from eyes.

6. Head or body lice or other parasitic disease

Parents will be contacted for early pick up if their child displays any of the above symptoms. If we do request this, while we understand that it is an inconvenience to you, we appreciate your child being picked up within half an hour of notification.

If a child is sent home for any of the above illnesses, they may not return until they have been "symptom free for 24 hours".

COMMUNICABLE DISEASES

Children having communicable diseases may not attend school until the attending physician indicates returning to school is appropriate. Please notify the school immediately if a child is diagnosed as having a contagious disease such as strep, chickenpox, conjunctivitis (pink eye), lice or ringworm. Children with strep infection must be kept home 24 hours after being placed on medication, longer if advised by your physician. We are required by licensing to post notices of the above illnesses which will then alert you to be watchful concerning your child.

Concerning "cold" symptoms:

We trust that you will use good judgment when your child starts to exhibit signs of a cold. Ideally a child will benefit by staying home and resting at the onset of a cold, which might ultimately prevent further complications and in the long run requiring you to take off less time at work. Please instruct your child in the use of tissues and show him/her how to "cover a cough or sneeze". If your child is not able to do these things, please keep him home an extra day or so. Children should stay home for 24 hours after their temperature returns to normal.

Concerning a fever:

Do not send a child to school if he/she has exhibited a fever the day before or the morning of school. It is never acceptable to give a child Tylenol or other fever reducing medication in order for them to participate at school when a fever of 100 degrees and above is detected. A child with a temperature is most likely

contagious and the health of classmates should be a consideration. A child should not return to school until he/she can participate in all activities ***indoors and outdoors. All children attending are expected to go outdoors when the rest of the class plays outside on the playground.***

MEDICATION

Parents are welcome to come to the Learning Center at the time their child needs medication and to administer it themselves, however, we have a policy of not administering medication of any kind.

INJURIES

Minor to moderate scrapes, cuts and other injuries and medical problems will be handled according to standard first aid procedures. An accident report will be written and ready for the parent to sign at pick up time. ***In addition***, you will receive a phone call, per state licensing requirement, informing you of the injury to your child.

MAJOR MEDICAL EMERGENCIES will be handled by assessing the extent of the injury or medical problem and the parent will immediately be contacted. If appropriate, a medical emergency team will be summoned by dialing 911. A staff member will remain with the child until the parent/medical team arrives to assume supervision of the child. A preliminary accident report will be prepared and given to the parent upon arrival. A detailed accident report for the parents will be completed for the parent to sign and date and a copy will be

maintained as part of the child's permanent record and another copy given to the parent.

If a parent or emergency number contacts are not available, a staff member will proceed with emergency medical treatment as outline on the child's information card and authorized by the parent.

SECURITY SYSTEM All doors meet fire code regulations as far as exiting, however, we have a security system in place for entering the Learning Center. Parents are given this security door code upon enrollment of their child. This code changes at the beginning of each school year.

FIRE AND TORNADO DRILLS

We are required by licensing to do monthly fire drills and quarterly tornado drills. We are treating the tornado drill also as a practice for an in-house lock-down for other type emergencies. We do not alert the children of this concept as we do not want to cause them to feel any undue alarm.

Handbook last revised October 2014